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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. [redacted] 89

CITIES SERVICE GAS COMPANY, a Corporation,
Appellant,

VERSUS

STATE CORPORATION COMMISSION OF KANSAS, HARRY SNYDER, JR., Chairman, RICHARD C. BYRD and JOHN I. YOUNG, as Members of Said Commission, and Their Respective Successors in Office,

Appellees.

ON APPEAL FROM THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF KANSAS

APPELLANT'S MOTION TO REVERSE FINAL JUDGMENT OF THE SUPREME COURT OF KANSAS

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February, 1957

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Appellant Cities Service Gas Company, based upon the conceded and undisputed facts shown by the record, moves this Honorable Court, after noting probable jurisdiction herein or otherwise, to enter an order and judgment herein summarily reversing the final judgment and decision of the Supreme Court of the State of Kansas, under attack in this appeal, as applied to the operations of Appellant, either on its own motion or upon this motion, because

the same discloses upon its face that it is palpably erroneous in that the same obviously and directly conflicts with the provisions of the Natural Gas Act as recently clearly interpreted by this Court in the specific cases hereinafter cited. In support thereof, Appellant submits the following reasons, grounds and cases:

1. The Supreme Court of Kansas in its opinion (180 Kan. 454, 459, 304 P.2d 538, 532, 533, Appendix A, Jurisdictional Statement, pp. viii-ix) concedes as disclosed by the uncontradicted facts of record in the case (R. 6-25) that:

> "During all dates in question the Gas Company (Appellant), a natural gas company as defined in the Natural Gas Act, in its operations in the purchase of gas in the Kansas-Hugoton Field purchased gas from the producers delivered at the wellhead, also delivered at its pipeline in the field after production and gathering had ended. It had no production in the field and purchased therein all gas so obtained. Of the gas so purchased during the year 1951, 55.4 per cent was purchased at the wellhead and 44.6 per cent pipeline delivered in the field after production and gathering had been completed.
>
> "From what has been heretofore stated it appears that the sales of gas made by producers in the field to the Gas Company (Appellant), in the first instance after production had ceased and in the second after production and gathering had ended, were sales in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or other uses. It also appears from such record that after such sales had been completed the

Gas Company (Appellant) placed such gas in its interstate integrated pipeline system and thereafter made resales thereof to at least some of the appellant Cities."

2. It is apparent that the Supreme Court of Kansas has, by its opinion, decision, and final judgment in this case, plainly misconstrued and misconceived the object and purpose of the Natural Gas Act (15 U. S. C. A. 717, 52 Stat. 821), the power, authority, and jurisdiction of the states in face of the provisions thereof, and the jurisdiction and authority of the Federal Power Commission thereunder, as made clear and understandable by the recent decisions of this Court in *Phillips Petroleum Company* v. *State of Wisconsin et al.* (No. 280), *State of Texas et al.* v. *State of Wisconsin et al.* (No. 231), and *Federal Power Commission* v. *State of Wisconsin, Public Service Commission of Wisconsin et al.* (No. 418), 347 U.S. 672, 98 L. Ed. 1035, and *Natural Gas Pipe Line Company of America* v. *Panoma Corporation and Corporation Commission of the State of Oklahoma* (No. 191), *Natural Gas Pipe Line Company of America* v. *Corporation Commission of the State of Oklahoma et al.* (No. 321), 349 U.S. 44, 99 L. Ed. 866, and *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission et al.*, 349 U.S. 945, 99 L. Ed. 1272.

3. The Kansas Supreme Court has failed to comprehend that the purpose of this Court in the *Phillips* v. *State of Wisconsin, et al.*, case, *supra*, was to interpret and construe the Natural Gas Act so that producers, the pipeline companies and the Federal Power Commission would know who came under the Act and to what operations in the gas industry the Act applied. It is clear to Appellant that this

Court, as plainly stated in such case, has interpreted the Natural Gas Act so that it applies to all sales of natural gas in interstate commerce for resale, else this Court would not have said:

> "Petitioners attempt to distinguish the Interstate Case on the grounds that the Interstate Company transported the gas in its pipelines after completion of gathering and before sale, and that the Interstate Company was affiliated with an interstate pipeline company and therefore subject to Commission jurisdiction in any event. *This Court, however, refused to rely on such refinements and instead based its decision in Interstate on the broader ground that sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemption*" (Emphasis supplied) L. C. 680, 681.
>
> "Rather, we believe that the legislative history indicates a congressional intent to give Commission (Federal Power Commission) *jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company*" (Emphasis supplied) L. C. 682.

4. It is manifestly true that the minimum gas price-fixing order of said Corporation Commission under review in this case, which reads:

> "That all persons, firms or corporations which take gas or cause gas to be taken from the Hugoton Gas Field in Kansas on and after January 1, 1954; 12:01 A.M., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to

> all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease-owners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per Mcf. (14.65# psia.) at the wellhead until further orders of this Commission" (R. 6, 51 *et seq.*).

is essentially in form, substance and legal effect the same as the Oklahoma minimum gas price-fixing order, considered, set aside and reversed by this Court in *Natural Gas Pipe Line Company of America* v. *Panoma Corporation and Corporation Commission of the State of Oklahoma*, *supra*, which Oklahoma order reads:

> "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price at the wellhead of less than 7¢ per Mcf. of natural gas measured at a pressure of 14.65# absolute pressure per square inch."

(See *Natural Gas Pipe Line Company of America* v. *Panoma Corporation*, 271 P.2d 354, 363.)

5. It is also clear that the Supreme Court of the State of Kansas has, by its opinion and decision in this case, interpreted and construed the minimum gas price-fixing order of said Corporation Commission of Kansas for the Kansas-Hugoton Field to require Appellant, in its operations in the purchase of natural gas in said field from producers therein at the wellhead and also in the field after production and gathering had been completed for transportation in interstate commerce and sale for resale for ultimate public consumption, to pay to the producers the minimum price prescribed by said order, or suffer the consequences and

penalties prescribed by the Kansas statutes. (G. S. Kansas, 1949, 55-706, 708, 709 and 710, Appendix D, p. xxx *et seq.*, Jurisdictional Statement.) This becomes more apparent when the Kansas Court's opinion is considered in connection with Appellant's motion for rehearing (R. 129) and the Court's denial thereof without opinion (R. 137).

6. Based on the conceded facts as stated by the Kansas Supreme Court set forth in paragraph 1 hereof, the uncontradicted facts of record in the case (R. 6-25), and the recent decisions of this Court, *supra*, construing the Natural Gas Act, it is perfectly apparent that the Supreme Court of Kansas has committed such patent, palpable and obvious error in its opinion, decision and final judgment that this Court should summarily on the conceded facts and record before it reverse and set aside such final judgment as applied to Appellant's operations in the purchase of gas in said Kansas Hugoton Gas Field, and thus avoid the costs of printing and filing the record and briefs, taking up and unnecessarily utilizing the time of this Court in oral argument and the consideration of exhaustive briefs based upon a voluminous record.

7. Authority for this motion is based on 28 U. S. C. A. 2106, 62 Stat. 963, Rule 35 (1) and (2) of this Court and the following cases: *Womble* v. *United States*, 324 U.S. 830, 89 L. Ed. 1397; *Ex parte United States*, 319 U.S. 730, 87 L. Ed. 1693; *Seago* v. *New York Central Railroad Co.*, 315 U.S. 781, 86 L. Ed. 1188; *Magnolia Petroleum Company* v. *Hull*, 314 U.S. 781, 86 L. Ed. 466; *United States et al.* v. *Berger et al.* (9th Circuit), 150 F.2d 56; *Chesapeake & Ohio Railway Company* v. *Martin, et al.*, 283 U.S. 209, 220, 221, 75 L. Ed.

983, 990, and *National Labor Relations Board* v. *Woolworth*, No. 413, 352 U.S. 938, decided December 10, 1956.

The recent memorandum decision of this Court in *Pocatello Building & Construction Trades Council, et al.* v. *C. H. Elle Construction Company, et al.*, No. 372, 352 U.S. 884, decided November 5, 1956, makes it perfectly apparent where the judgment of the State Court on the record is clearly erroneous this Court will summarily reverse the final judgment of such State Court and avoid a protracted consideration of the case. Compare *Retail Clerks International Association, Local No. 560, et al.* v. *J. J. Newberry Company, a corporation*, No. 597, decided January 28, 1957.

Respectfully submitted,

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